

LAW OFFICES

**SNOW, CHRISTENSEN & MARTINEAU**

10 EXCHANGE PLACE, ELEVENTH FLOOR  
POST OFFICE BOX 45000  
SALT LAKE CITY, UTAH 84145-5000  
TELEPHONE (801) 521-9000  
FACSIMILE (801) 363-0400

THURMAN & SUTHERLAND	1886
THURMAN, SUTHERLAND & KING	1888
THURMAN, WEDGWOOD & IRVINE	1906
IRVINE, SKEEN & THURMAN	1923
SKEEN, THURMAN, WORSLEY & SNOW	1952
WORSLEY, SNOW & CHRISTENSEN	1967

JOHN H. SNOW 1917-1980

OF COUNSEL  
MERLIN R. LYBBERT  
JOSEPH NOVAK

WRITER'S DIRECT NUMBER:

322-9156

**RECEIVED**  
JUL 03 1991

**WATER RIGHTS  
SALT LAKE**

Robert L. Morgan, P.E.  
Utah State Engineer  
1636 West North Temple, Suite 220  
Salt Lake City, Utah 84116-3156

Re: Proposed Distribution of Water Within the  
Utah Lake Drainage Basin (5/14/91 Draft)

Dear Mr. Morgan:

Provo River Water Users' Association (the "PRWUA")  
respectfully submits the following comments relative to the  
5/14/91 Draft of the proposed Distribution of Water Within the  
Utah Lake Drainage Basin (the "Distribution Proposal").

**GENERAL COMMENTS**

**I. Introduction.**

PRWUA concurs in the need to more clearly define the  
relationship between the Utah Lake and Jordan River water rights  
and the water rights on upstream tributaries. Equally important  
is to formulate policies, procedures and guidelines to govern the  
administration of all related water rights within the drainage  
basin and the equitable distribution of the waters thereunder  
consistent with applicable law and existing decrees. However, it  
is respectfully submitted that the Distribution Proposal falls  
short of achieving those objectives.

In general, the Distribution Proposal does not differentiate  
between the Jordan River water rights and Utah Lake water rights,  
nor does it address issues relating to the distribution of trans-  
basin diversions or return flows of foreign waters accumulating  
in Utah Lake. Likewise, it does not take into consideration the

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exchanges of "head of the river" storage waters on the upper Provo River for storage water in Deer Creek Reservoir which have been operational for in excess of 45 years or the Deer Creek-Strawberry Exchange which has been operational since 1986. Furthermore, the Distribution Proposal does not give recognition to existing agreements and is contrary to or at least inconsistent with specific provisions of the "Provo River Decree" dated May 2, 1921.

### SPECIFIC COMMENTS

#### II. Utah Lake and Upstream Water Rights.

##### Utah Lake (p.2)

(1) It should be noted that the diversions of water under the early priority direct flow rights on Jordan River did not all begin in approximately the year 1850. Rather, diversions under some of those rights began in 1850 and others began in 1851, 1853, 1859 and 1864 as shown by the Findings of Fact in the Morse Decree dated July 15, 1901 (Salt Lake County Civil No. 2861). PRWUA concurs with the conclusion that those downstream rights have been satisfied from accretions into the Jordan River.

(2) As with the early priority direct flow rights on Jordan River, the primary rights of the North Jordan Irrigation Company, South Jordan Canal Company, Utah and Salt Lake Canal Company and East Jordan Irrigation Company (collectively the "Associated Canal Companies") and Salt Lake City are direct flow rights from the Jordan River as augmented from releases of waters stored in Utah Lake. It should be noted that diversions under those rights began in 1853, 1870, 1877 and 1879, as shown by the Findings of Fact in the above Morse Decree. It should be further noted that those rights total 828 cubic feet per second ("cfs") and were collectively quantified in the Booth Decree dated June 5, 1909 (Utah County) at 185,000 acre-feet ("AF").

The primary and secondary rights in Utah Lake are the subject matter of the pending general adjudication proceeding and PRWUA reserves the right to challenge the quantities of water set forth on page 3 of the Distribution Proposal as a part of the general adjudication proceeding. However, it is noted that the quantities set forth therein are within the quantifications in

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the Booth Decree except for the combined South Jordan Canal and Salt Lake County Water Conservancy District (the "SLCWCD") 29,635 AF which exceeds the Booth Decree quantification of 27,500 AF. Historically, the combined North Jordan Canal and SLCWCD 15,849 AF have been supplied primarily from accretions to the Jordan River below the Turner Dam. By letter agreement dated August 17, 1989 among PRWUA, SLCWCD and Metropolitan Water District of Salt Lake City (the "MWD"), SLCWCD subordinated that portion of Water Right No. 59-3496, as amended by Change App. Nos. a-15006 (59-5272) and a-15015 (59-5722), which but for such changes could be satisfied from accretions to the Jordan River below Turner Dam, to the water rights evidenced by PRWUA's Certificate of Appropriation No. 6963 (55-295) and Utah Lake Distributing Company's Certificate of Appropriation No. 1970 (59-13). Accordingly, the Distribution Proposal must be modified to incorporate the foregoing subordination provisions among the parties thereto.

(3) PRWUA concurs that the active storage of Utah Lake is between minus 9.2 feet and compromise elevation (741,700 AF). However, the reference that such will be "maintained by users of the lake" as stated therein requires clarification.

(4) It is unclear how the 125,000 AF primary rights storage capacity in Utah Lake was determined and how it relates to the primary storage rights of 175,558 AF. It is assumed that the 617,000 AF of system storage was determined by subtracting the dead storage (128,300 AF) and the primary storage (125,000 AF) from the capacity of Utah Lake at compromise elevation (870,000 AF), i.e., 616,700 AF. PRWUA suggests that the above be clarified and a further explanation be provided. If the foregoing are based on studies made by your office, PRWUA would like the opportunity to review those studies and to submit its comments thereon.

Storage Rights: (p.4)

(6) PRWUA respectfully suggests that the innovative concepts of "priority storage" and "system storage" incorporated into the Distribution Proposal are unworkable given the complexity of the water rights to be administered. To limit the scope of the Distribution Proposal to the natural drainage waters of the Utah Lake Drainage Basin is unrealistic when trans-basin diversions under the Strawberry Valley Project (the "SVP"), Provo River Project (the "PRP") and the Bonneville Unit of the Central Utah

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Project (the "CUP") are inextricably intertwined and play a major role in the distribution of the waters of the Spanish Fork River, Provo River and Utah Lake. As applied to the PRP, the Storage Rights Section of the Distribution Proposal fails to provide for the distribution of:

(a) Trans-basin diversions of water from the Weber River stored in Utah Lake or return flows of waters diverted from the Weber River and Duchesne River which accumulate in Utah Lake under the PRP, or

(b) Storage waters in the upper Provo River drainage under exchanges for storage waters in Deer Creek Reservoir, or

(c) The waters covered by the Deer Creek-Strawberry Exchange dated May 16, 1986.

As to (a) above, PRWUA is entitled to divert 37,200 AF of water from the Weber River for storage in Utah Lake under Certificate of Appropriation No. 7755 (A12141) and to recover a like amount less evaporation losses but not to exceed 30,000 AF during the following year from the natural flow of the Provo River for storage in Deer Creek Reservoir. In addition, PRWUA is entitled to recover from the natural flow waters of the Provo River a maximum of 17,410 AF for storage in Deer Creek Reservoir in exchange for return flows from the waters diverted from the Weber River and Duchesne River which accumulate in Utah Lake under approved Application No. 12144 provided that the combined total under Certificate No. 7755 and Application No. 12144 shall not exceed 30,000 AF.

As to (b) above, 2,225 shares of stock of PRWUA (equivalent to 2,225 AF) are owned by 5 stockholders whose irrigated lands are situated above Deer Creek Reservoir in the areas of Kamas and Francis and above Woodland. Their PRP waters are delivered from the Provo Reservoir Water Users Company share of the head of the river storage in exchange for their respective shares of Deer Creek Reservoir storage water which has occurred each year since Deer Creek Reservoir became operational in the 1940's.

As to (c) above, the Deer Creek-Strawberry Exchange provides for the storage in Deer Creek Reservoir of all Provo River natural flow waters over and above prior existing water rights which are available for storage in Deer Creek Reservoir under the

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PRP Water Rights as augmented by the Bonneville Unit applications and as implemented by the Bonneville Unit facilities. The Central Utah Water Conservancy District (the "CUWCD") and/or the U. S. Bureau of Reclamation (the "USBR") are obligated to replace into Utah Lake from the enlarged Strawberry Reservoir such quantities of water as are required to satisfy the prior rights in Utah Lake in exchange for the storage of the Provo River natural flow waters in Deer Creek Reservoir. CUWCD has since acquired 25,000 AF of Utah Lake primary storage rights and 57,073 AF of Utah Lake secondary storage rights to further implement the exchange.

As to (a), (b) and (c) above, the Distribution Proposal makes no provision for the implementation of the exchanges covered thereby. In fact, the simultaneous exchange concept stated in paragraph 13 on page 6 thereof, would seem to preclude all three exchanges.

(6.1) PRWUA interprets this subparagraph to mean that upstream storage will be permitted whenever the waters in storage in Utah Lake exceed 253,300 AF (128,300 AF plus 125,000 AF). Such storage would be considered system storage under the Distribution Proposal. However, such storage waters should not be subject to call provided that a like quantity of water from another source is replaced into Utah Lake to meet the demands of the Utah Lake users as provided for in the Deer Creek-Strawberry Exchange and the last sentence of this subparagraph should be modified accordingly.

(6.2) It is unclear how the quantities of system storage referred to in this subparagraph and tabulated by month on page 5 were derived. If those quantities are based on studies conducted by your office, PRWUA would like the opportunity to review those studies and to submit comments thereon.

It appears that the tabulated quantities are premised on the concept of committing the first 873,300 AF of available storage water to the rights in Utah Lake and to provide a carry over of 125,000 AF of primary storage each year. If so, such concept is flawed, since those rights are limited to the combined annual diversion entitlements (presently 288,297 AF but subject to challenge) without carry over into the next year.

It is unclear from the table on page 5 as to when releases of upstream storage would be required. It appears that the quantities of water tabulated therein are predicated on zero inflow into Utah Lake which is unrealistic. It further appears that the changes in quantities from one month to the next must be based on projected Utah Lake outflows plus evaporation minus inflows to end with 125,000 AF of primary storage in October. Needless to say, the whole basis of the system storage concept is confusing and requires clarification.

(6.3) PRWUA interprets this subparagraph to mean that the primary storage level of Utah Lake is fixed at 253,300 AF and upstream storage under junior rights will be permitted whenever Utah Lake is above 253,300 AF, but will not be permitted when Utah Lake is below 253,300 AF. If so, this subparagraph should be modified to so provide. If not, this subparagraph needs further clarification.

(6.4) It is unclear throughout the Distribution Proposal and under this subparagraph as to when system storage can be called on to satisfy the Utah Lake diversion entitlement or to bring Utah Lake up to the primary storage level. Likewise, it is unclear as to when system storage will be converted to priority storage and the mechanics of making the conversion.

Direct Flow Rights: (p. 5)

(7.0) It is unclear under this subparagraph as to the meaning of the term "available storage" and whether it applies only to storage water in Utah Lake. Likewise, it is unclear whether the diversion entitlements referred to therein include both the primary storage rights and secondary storage rights in Utah Lake for purposes of triggering joint regulation based on priority dates.

(8.0) The Distribution Proposal supporting documents adopts the following priorities for distribution purposes:

- (a) Jordan River early priority rights - 1850;
- (b) Utah Lake primary rights - 1870;
- (c) Utah Lake secondary rights - 1908-1912;

(d) Provo River Class A rights - 1865; and

(e) Provo River Wasatch Division rights - 1884-1900.

PRWUA respectfully suggests that (d) and (e) above are contrary to and in direct violation of paragraph 121 of the Provo River Decree, which specifically provides that with minor exceptions the First to Sixteenth Class rights in the Wasatch Division have priority over the rights in the Provo Division. PRWUA acknowledges the need to manage the entire drainage basin as one system. However, in so doing the existing decrees adjudicating rights in Utah Lake and in each tributary must be followed in distributing water among those parties to each respective decree.

### III. Other Distribution Issues.

(9) PRWUA acknowledges that diversions of exported water should be regulated by the River Commissioner for the system from which the export is made. However, after the export waters are diverted, the distribution thereof must be by the River Commissioner of the system to which the export waters have been diverted. Accordingly, the Provo River Water Commissioner should distribute the Provo River Project waters diverted to the Provo River through the Weber Provo Diversion Canal and through the Duchesne Tunnel and the Provo River water stored in Deer Creek Reservoir in exchange for return flows from Provo River Project foreign waters accumulating in Utah Lake.

(10) PRWUA recognizes the need for improved data collection and reporting.

(13) As noted above, simultaneous exchanges are simply unworkable as to the exchanges of PRP trans-basin diversions, "head of the river storage" and the Deer Creek-Strawberry Exchange.

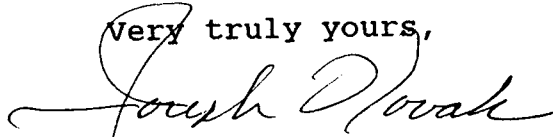
PRWUA is of the view that further public hearings, meetings and discussions will be required before any workable distribution plan can be formulated. Responses to the foregoing comments and to the comments of other interested parties, including clarifications of the uncertainties in the current Distribution Proposal, should be prepared by your office and presented for

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further review and discussion at public hearings similar to those conducted on May 14, 1991. Consideration should be given as to whether the distribution of waters of the lower Jordan River should be integrated into the distribution plan.

PRWUA is appreciative of the efforts of your office in developing a distribution plan and providing it with the opportunity to comment thereon. The need is apparent and the time has come. However, caution should be exercised in adopting such a plan even on an interlocutory basis until it has been fully considered by all water users to be affected thereby.

Very truly yours,

A handwritten signature in cursive script, reading "Joseph Novak". The signature is written in dark ink and is positioned above the printed name and title.

Joseph Novak, General Counsel  
Provo River Water Users Association

JN:dwb

cc: Provo River Water Users Association  
United States Bureau of Reclamation  
Central Utah Water Conservancy District